IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TEXAS ASSOCIATION OF REALTORS®, INC.,	§	
Plaintiff,	§	
V.	§	CIVIL ACTION NO. 3:17-CV-873
AUTOREALTY, LLC, MISTY MICHELLE HARRISON, BRADLEY BRUCE HOLMES, and PAUL DAVID WHATLEY	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Texas Association of REALTORS®, Inc., for its Original Complaint against Defendants AutoRealty, LLC, Misty Michelle Harrison, Bradley Bruce Holmes, and Paul David Whatley, alleges the following:

I.
PARTIES

1. Plaintiff Texas Association of REALTORS®, Inc. ("TAR") is a non-profit corporation organized under the laws of the state of Texas with a principal place of business located at 1115 San Jacinto Blvd., Suite 200, Austin, Texas 78701.

2. Defendant AutoRealty, LLC ("AutoRealty") is a limited liability company organized under the laws of the state of Texas with a principal place of business located at 1060 West Pipeline Road, Suite 101, Hurst, Texas 76053.

3. Defendant Misty Michelle Harrison is an individual residing in the state of Texas with an address at 813 Cullum Court, Hurst, Texas 76053.

4. Defendant Bradley Bruce Holmes is an individual residing in the state of Texas

with an address at 7220 Shady Grove, Keller, Texas 76248.

5. Defendant Paul David Whatley is an individual residing in the state of Texas with an address at 3213 Haltom Road, Haltom City, Texas 76117.

II.
JURISDICTION AND VENUE

6. This is a civil action for copyright infringement arising under the Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et. seq.*, violations of Section 43(a) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a), and for unfair competition/misappropriation under Texas law.

7. This Court has original jurisdiction of TAR's Copyright Act and Lanham Act claims action under 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over TAR's state law claim under 28 U.S.C. § 1367(a).

8. This Court may exercise personal jurisdiction over AutoRealty, LLC, Misty Michelle Harrison, Bradley Bruce Holmes, and Paul David Whatley (collectively, "Defendants") because Defendants each reside in the state of Texas and have had continuous and systematic contacts with Texas and this District sufficient for this Court to establish personal jurisdiction over Defendants.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a), because Defendants reside in this judicial district and because a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this judicial district.

III.
FACTUAL BACKGROUND

A. TAR's Background, Copyrighted Forms, and Trademarks

10. Founded in 1920, TAR is a non-profit corporation dedicated to promoting and protecting private-property ownership rights, advocating for Texas REALTORS® and property owners, and keeping home ownership affordable in Texas.

11. With more than 100,000 members and 70 employees, TAR is the largest professional membership association in Texas. TAR is dedicated to serving its members through developing and promoting programs and services in the real estate field.

12. Among other things, TAR is recognized as a provider of high-quality real estate forms which assist its members in achieving success in the real estate field.

13. Over many years, TAR has created and maintained an extensive resource library of original, copyrighted real estate forms created and designed to cover essentially all aspects of the types of residential and commercial real estate purchase, sale, and leasing transactions in which TAR's members engage (the "TAR Library").

14. The TAR Library reflects many original and creative copyrighted works, each of which is the product of comprehensive knowledge compiled over years of experience and the profound expertise of TAR concerning the best practices, laws, and regulations affecting the business activities of real estate professionals in Texas. TAR's forms are each made up of considerable original content, including text, layout, and design features that are the exclusive property of TAR.

15. Access to the TAR Library is primarily restricted to TAR members, and the forms in the TAR Library are not made available to the general public. Real estate professionals who are not TAR members may also individually access certain commercial forms from the TAR

Library by agreeing to TAR's terms and paying an annual license fee of $500.

16. Access to the TAR Library is a highly regarded benefit of membership in TAR.

17. The ability to offer access to the TAR Library is a major selling point for TAR to market to, obtain, and retain members from the industry of Texas real estate professionals.

18. TAR monitors and controls the manner in which the copyrighted works of the TAR Library may be used by licensed users and strictly limits access to the TAR Library to TAR members and authorized users.

19. TAR's forms are all clearly marked with copyright notices and state "USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED. ©Texas Association of REALTORS®, Inc."

20. TAR has applied to the Register of Copyrights and received Certificates of Copyrighted Registration for hundreds of works covering all aspects of the real estate industry in the TAR Library. As presently relevant to this action, TAR owns the following U.S. Copyright Registrations applicable to the following TAR forms (the "Infringed TAR Forms").

TAR Form No.	TAR Form Name	U.S. Copyright Reg. No.
1201	Farm & Ranch Real Estate Listing Agreement—Exclusive Right to Sell	TX 7,829,268
1406	Seller's Disclosure Notice	TX 7,829,256
1802	Commercial Contract—unimproved property	TX 7,900,816
2003	Residential Lease Application	TX 7,926,554
2201	Residential Leasing and Property Management Agreement	TX 6,243,329

21. Representative examples of the Infringed TAR Forms are attached hereto as Exhibit A.

22. Copies of the Certificates of Registration for the Infringed TAR Forms are attached hereto as Exhibit B.

23. On information and belief, Defendants have also been making unauthorized copies of several other forms for which TAR also owns U.S Copyright Registrations.

24. Each TAR form is also emblazoned with the mark set forth below:

TEXAS ASSOCIATION OF REALTORS®

(the "TAR Logo").

25. In addition to the TAR Logo, TAR also uses the word mark Texas Association of REALTORS® (the "TAR Word Mark") in its forms as a designation of origin and ownership. TAR has continuously used and exclusively promoted the TAR Logo and TAR Word Mark (collectively the "TAR Trademarks") in association with its products and services.

26. TAR has established considerable trademark rights in the TAR Trademarks. TAR has been using the TAR Word Mark in commerce in connection with its real estate services since at least October 1968 and has been using the TAR Logo in commerce in connection with its real estate services since at least June 1996. TAR has continuously used the TAR Trademarks throughout its advertisements, website, marketing materials, and real estate forms for many years and has developed valuable goodwill and brand recognition in association with the marks both in Texas and nationwide. Those engaging in Texas real estate transactions, including TAR's members, have come to associate the TAR Trademarks with TAR and its high-quality products and services.

27. By affixing the TAR Trademarks to the forms in the TAR Library, TAR has

signified to its members, users, and recipients of the works that the TAR Library is complete, accurate, fair, legitimate, up to date, and of the highest quality.

28. TAR has at all pertinent times expended considerable amounts of time and money and has employed numerous individuals to revise, improve, and update the TAR Library to ensure that its works remain current with the various business, legal and policy changes affecting the Texas real estate services industry and to create and conform with ever-evolving industry best practices.

B. Defendants' Infringing Activities

29. Prior to July 31, 2013, TAR granted AutoRealty a license to use select TAR forms from the TAR Library as part of a software program in exchange for an annual fee of $7,500 per year.

30. After AutoRealty repeatedly failed to pay its license fees, Defendant Paul David Whatley of AutoRealty signed an agreement on July 23, 2013 promising that AutoRealty would make no further use of TAR's forms on its website after July 31, 2013. A copy of the July 23, 2013 agreement is attached hereto as Exhibit C.

31. Since July 31, 2013, Defendants have had no right to display, sell, distribute, or otherwise use TAR's forms.

32. Despite having no license or authorization to use TAR's forms after July 31, 2013, Defendants continued, without authorization, to make TAR's forms available to their customers.

33. Since July 31, 2013, TAR has repeatedly notified Defendants that their continuing use of TAR's forms was unauthorized. On January 19, 2015, TAR sent Defendants a letter notifying them that they were making continued use of TAR's forms without proper

authorization or payment of required licensing fees. A true and correct copy of the January 19, 2015 letter is attached hereto as Exhibit D.

34. TAR again contacted Defendants by letter dated February 24, 2015 to notify Defendants they were using TAR's forms on their websites without authorization and demanding that they cease and desist from further unauthorized use. A copy of TAR's February 24, 2015 letter is attached hereto as Exhibit E.

35. After TAR contacted Defendants on December 3, 2015 regarding Defendants' unauthorized use of TAR's forms, Whatley responded on or about December 15, 2015, claiming that he was no longer affiliated with AutoRealty and that all further communications should be directed to Defendant Holmes. A copy of Whatley's December 15, 2015 letter is attached hereto as Exhibit F. A copy of Texas Secretary of State records showing Whatley and Holmes to both still be the members of AutoRealty as of March 27, 2017 is attached hereto as Exhibit G.

36. On January 25, 2016, TAR again sent Defendants a letter notifying them that their continued use of TAR's forms was unauthorized and demanding that Defendants cease and desist from further unauthorized use of TAR's forms. A copy of TAR's January 25, 2016 letter is attached hereto as Exhibit H. Defendants did not respond to this letter.

37. On information and belief, throughout 2016, Defendants continued to make TAR's forms available to their customers, without authorization, through their website and through their AutoContract software.

38. On September 13, 2016, Defendants sent Crista Bass of Byrd Realty, an AutoRealty customer, a letter and invoice requesting that she renew her AutoContract maintenance subscription. The letter listed Whatley's name in the signature block. A true and correct copy of the September 13, 2016 letter is attached hereto as Exhibit I.

39. On January 5, 2017, TAR again contacted Defendants and demanded that they cease and desist from all further infringing use of TAR's forms and provide an appropriate accounting. As of the filing of this Complaint, Defendants have failed to adequately comply with TAR's requests.

40. On information and belief, Defendants continued, at all times from July 31, 2013 through at least the end of 2016, to market, advertise, distribute, display, offer to sell and sell unauthorized copies of TAR's forms to their customers without authorization through Defendants' website and AutoContract software.

41. Defendants have, on information and belief, made each of the Infringed TAR Forms available to their customers since July 31, 2013 without authorization. Examples of infringing copies of TAR forms that Defendants have made available to their customers without authorization are attached hereto as Exhibit J. On information and belief, Defendants have also made other copyrighted TAR forms from the TAR Library available to their customers without authorization, and otherwise unlawfully used the forms, since July 31, 2013.

42. As a consequence of Defendants' past, and possibly ongoing and future infringement, TAR has suffered and will continue to suffer irreparable injury, the exact nature, extent, and amount of which cannot be ascertained at this time. Therefore, in addition to other remedies, TAR also seeks injunctive relief.

IV.
CAUSES OF ACTION

Count One: Copyright Infringement - 17 U.S.C. § 101, et seq.

43. TAR refers to and incorporates by reference the allegations contained in Paragraphs 1 through 42 as though set forth fully herein.

44. At all relevant times, TAR was, and is the owner of the exclusive copyright

interests in the Infringed TAR Forms, as well as many other copyrighted forms in the TAR Library, each of which was created in the United States.

45. The Infringed TAR Forms, as well as the other copyrighted forms in the TAR Library, contain a substantial amount of original material that constitutes copyrightable subject matter pursuant to 17 U.S.C. § 102(a) and which is protected under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*

46. As previously stated, TAR has obtained Certificates of Registration from the United States Register of Copyright applicable to each of the Infringed TAR Forms, as well as hundreds of other forms in the TAR Library.

47. TAR has at all times complied in all respects with the Copyright Act of 1976 and all other laws of the United States with regard to its copyrighted forms.

48. Defendants have used, or caused to be used, unauthorized copies of the Infringed TAR Forms and, on information and belief, other forms in the TAR Library, in violation of TAR's exclusive rights under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq*. Defendants' marketing, advertising, distributing, displaying, offering to sell, and selling of substantially similar or identical copies of TAR's copyrighted forms constitutes copyright infringement in violation of TAR's exclusive rights under the Copyright Act.

49. Defendants have not, since July 31, 2013, had any express or implied license to use the Infringed TAR Forms or any other copyrighted forms in the TAR Library.

50. Defendants are also liable as contributory infringers because they have induced and encouraged their customers, including users of Defendants' website and AutoContract software, to use infringing, unauthorized copies of TAR's forms.

51. Defendants are additionally liable as vicarious infringers, because Defendants

have the right and ability to supervise and control their customers' infringing activities and have profited from the direct infringement of Defendants' customers by collecting fees from their customers.

52. Defendants' continuing acts of copyright infringement, unless enjoined, will cause and have caused irreparable damage to TAR in that TAR will have no adequate remedy at law to compel Defendants to cease such acts. If such acts are not permanently enjoined, TAR could be compelled to prosecute a multiplicity of actions, one action each time Defendants or any of their users commit infringing acts, and in each such action it will be extremely difficult to ascertain the amount of compensation which will afford TAR adequate relief.

53. By reason of Defendants' acts of copyright infringement, TAR is entitled to recover actual damages and all profits received or otherwise achieved, directly or indirectly, by Defendants in connection with Defendants' marketing, advertising, distributing, displaying, offering to sell, and selling of TAR's copyrighted forms or, in the alternative, statutory damages as provided for in 17 U.S.C. § 504(c). TAR is also entitled to recover attorneys' fees and costs under 17 U.S.C. § 505.

Count Two: Violations of Section 43(a) of the Lanham Act; 15 U.S.C. § 1125(a)

54. TAR refers to and incorporates by reference the allegations contained in Paragraphs 1 through 53 as if fully set forth herein.

55. On information and belief, Defendants have advertised, marketed, and sold their products and services using the TAR Trademarks without authorization from TAR, including by making the Infringed TAR Forms and other forms from the TAR Library, each of which is emblazoned with the TAR Trademarks, available to their customers.

56. Defendants' unauthorized use of the TAR Trademarks is likely to cause

confusion, to cause mistake, and to deceive as to the affiliation, connection, and association of Defendants with TAR, TAR's products and services, and as to the origin, sponsorship, or approval of Defendants' goods and services by TAR in violation of 15 U.S.C. § 1125(a)(1)(A).

57. Through their infringing and unauthorized use of the TAR Trademarks, Defendants have further misrepresented the nature, characteristics, qualities, and/or geographic origin of Defendants' products in violation of 15 U.S.C. § 1125(a)(1)(B).

58. TAR has no control over the nature or quality of the products and services sold and offered for sale by Defendants. Any failure, neglect, or default of Defendants in advertising, marketing, or selling their products and services to consumers will reflect adversely upon TAR as the believed source of origin and/or approval of the products and services.

59. Such adverse reflection will severely frustrate efforts by TAR to continue to protect its outstanding reputation for high quality with respect to TAR's forms.

60. Defendants' activities have caused and, unless enjoined, will continue to cause irreparable injury to TAR and the goodwill TAR has established in its name, products, and services over the years.

61. TAR has suffered and may continue to suffer substantial damage to its business, reputation, and goodwill, and may continue to suffer the loss of sales and profits that TAR would have made but for Defendants' acts, and TAR is entitled to recover damages, Defendants' profits, and the costs of this action pursuant to 15 U.S.C. § 1117(a).

62. Defendants' conduct constitutes an "exceptional" case under 15 U.S.C. § 1117(a), and TAR is entitled to attorneys' fees and other costs the Court considers just and equitable.

Count Three: Unfair Competition/Misappropriation

63. TAR refers to and incorporates by reference the allegations contained in

Paragraphs 1 through 62 as though set forth fully herein.

64. TAR developed the TAR Trademarks and forms through extensive time, skill, labor and money. In connection with the advertisement, marketing, and sale of their products, Defendants have exploited the reputation and goodwill associated with the TAR Trademarks and forms in competition with TAR to gain a competitive advantage.

65. Defendants gained a particular advantage because they were not burdened with the expenses incurred by TAR in developing the goodwill, reputation, and works of TAR.

66. By these actions, Defendants have gained a financial benefit for themselves and have caused financial loss and damages to TAR.

67. Such actions by Defendants have caused and will continue to cause TAR irreparable injury for which TAR has no adequate remedy at law.

V.
REQUEST FOR INJUNCTIVE RELIEF

68. TAR refers to and incorporates by reference the allegations contained in Paragraphs 1 through 67 as though set forth fully herein.

69. Defendants have violated 17 U.S.C. § 101, *et seq.* and 15 U.S.C. § 1125(a), and TAR is therefore entitled to injunctive relief under 17 U.S.C. § 502(a) and 15 U.S.C. § 1116.

70. TAR requests that the Court issue preliminary and permanent injunctions enjoining Defendants and their officers, directors, agents, employees, successors, assigns and attorneys, and all other persons or entities in active concert or participation with Defendants who receive notice of the injunction by personal service or otherwise, from doing, aiding, causing or abetting the following:

(a) engaging in any acts or activities directly or indirectly calculated to infringe upon TAR's copyrights, including its copyrights in forms in the TAR Library;

(b) directly or indirectly using, or enabling others to use, any duplication or reproduction of any of TAR's copyrighted works, including, but not limited to the Infringed TAR Forms and any other copyrighted forms in the TAR Library;

(c) engaging in any acts or activities directly or indirectly calculated to trade upon TAR's trademarks, names, logos, reputation or goodwill, including any further use of marks that are identical or confusingly similar to the TAR Trademarks;

(d) directly or indirectly using in commerce a reproduction, counterfeit, copy, or colorable imitation of the TAR Trademarks in connection with the sale, offering for sale, distribution, or advertisement of any goods and/or services without authorization from TAR;

(e) directly or indirectly using any false designation of origin, false or misleading description of fact, or false or misleading representation of fact in connection with the sale of Defendants' products or services, including any representation that Defendants are affiliated with TAR; and

(f) passing off, inducing or enabling others to sell or pass off, as products or services produced by or for or distributed with authorization of TAR, any product or service that is not the product or service of TAR, is not produced under the control or supervision of TAR, is not approved by TAR, or is not distributed with TAR's express authorization.

71. TAR will suffer immediate and irreparable damage, injury and harm for which there is no adequate remedy at law if Defendants are not immediately and permanently enjoined from the conduct listed above.

72. Public policy favors the protection of intellectual property rights, and any

injunctive relief granted herein will therefore be in accordance with public policy.

73. The potential damage to TAR if the injunctive relief requested herein is not granted far outweighs any harm that Defendants will suffer as a result of the injunctive relief requested. Immediate and permanent injunctive relief is therefore appropriate.

VI.
JURY DEMAND

74. TAR hereby demands a trial by jury on all issues triable by jury.

VII.
PRAYER

WHEREFORE, TAR prays that the Court grant the following relief:

1. Order that Defendants and their officers, directors, agents, employees, successors, assigns and attorneys, and all persons and entities in active concert or participation who receive notice of the injunction by personal service or otherwise, be enjoined and restrained preliminarily during the pendency of this action, and then permanently, from doing, aiding, causing, or abetting any of the following:

(a) engaging in any acts or activities directly or indirectly calculated to infringe upon TAR's copyrights, including its copyrights in forms in the TAR Library;

(b) directly or indirectly using, or enabling others to use, any duplication or reproduction of any of TAR's copyrighted works, including, but not limited to the Infringed TAR Forms and any other copyrighted forms in the TAR Library;

(c) engaging in any acts or activities directly or indirectly calculated to trade upon TAR's trademarks, names, logos, reputation or goodwill, including any further use of marks that are identical or confusingly similar to the TAR Trademarks;

(d) directly or indirectly using in commerce a reproduction, counterfeit, copy, or colorable imitation of the TAR Trademarks in connection with the sale, offering for sale, distribution, or advertisement of any goods and/or services without authorization from TAR;

(e) directly or indirectly using any false designation of origin, false or misleading description of fact, or false or misleading representation of fact in connection with the sale of Defendants' products or services, including any representation that Defendants are affiliated with TAR; and

(f) passing off, inducing or enabling others to sell or pass off, as products or services produced by or for or distributed with authorization of TAR, any product or service that is not the product or service of TAR, is not produced under the control or supervision of TAR, is not approved by TAR, or is not distributed with TAR's express authorization.

2. Order Defendants to file with the Court and serve upon counsel for TAR within thirty (30) days after the entry of the permanent injunction prayed for in this Complaint, a written report, sworn to under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

3. Order Defendants to account for and pay to TAR all profits derived by reason of Defendants' acts alleged in this Complaint;

4. Order Defendants to pay TAR all actual damages it has sustained as a result of Defendants' actions including, without limitation, damage to TAR's business, reputation and goodwill, and the loss of sales and profits that it would have made but for Defendants' acts;

5. Order Defendants to pay TAR statutory damages as provided for in 17 U.S.C.

§ 504(c), including enhanced statutory damages for willful infringement;

6. Find that this is an "exceptional" case pursuant to 15 U.S.C. § 1117;

7. Award TAR treble damages pursuant to 15 U.S.C. § 1117;

8. Award TAR its costs of suit, including reasonable and necessary attorneys' fees and expenses;

9. Award TAR pre-judgment and post-judgment interest at the highest legal rate on all sums awarded in the Court's judgment; and

10. Award TAR such other and further relief to which it may be entitled at law or in equity.

Respectfully submitted,

/s/ Jason P. Bloom
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